
Bank of America N.A. as servicer for
The Bank of New York Mellon f/k/a The Bank of New York as trustee
for Certificateholders of CWALT, Inc. Alternative Loan Trust 2004-35T2
Mortgage Pass Through Certificates, Series 2004-35T2
7105 Corporate Drive
PTX-B-209
Plano, Texas 75024,
Putative Plaintiffs

Case No. 11-CV-3333

v.

Case Codes: 30404, 30303, 30201, 30106, 30107

Amy Jo Brown
15945 Ridgefield Court
Brookfield, Wisconsin 53005,
Purported Defendant, Counterclaimant and Crossclaimant
and

Unknown Spouse of Amy Jo Brown
15945 Ridgefield Court
Brookfield, Wisconsin 53005,
Nonexistent Party
and

Mortgage Electronic Registration Systems, Inc., as
nominee for Secured Funding Corp
1901 East Voorhees Street, Suite C
Danville, Illinois 61834

and

HSBC Mortgage Services, Inc.
26525 North Riverwoods Boulevard
Mettawa, Illinois 60045
Defendants

Amy Jo Brown
15945 Ridgefield Court
Brookfield, Wisconsin 53005,
Third Party Plaintiff

v.

The Bank of New York Mellon f/k/a The Bank of New York,
in its corporate capacity and not as Trustee of the
CWALT Alternative Loan Trust 2004-35T2
c/o Gerald Hassell, President and CEO
One Wall Street
New York, New York 10286,
Named Plaintiff solely in its capacity as Trustee joined as
Third-Party Defendant for Fraud in its corporate capacity
and in its capacity as Trustee for Fraud and Quiet Title

CWALT, Inc.
c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801,
Third Party Defendant for Fraud and Quiet Title and

Countrywide Home Loans, Inc.
C T Corporation System
8040 Excelsior Drive, Suite 200
Madison , Wisconsin 53717,
Third Party Defendant for Fraud

VERIFIED SECOND AMENDED ANSWER, SECOND AMENDED AFFIRMATIVE
DEFENSES, AMENDED COUNTERCLAIMS AND INITIAL CROSS CLAIMS
WITH CLAIMS FOR FDCPA VIOLATIONS, RICO VIOLATIONS AND WOCCA AGAINST
BLOMMER PETERMAN, S.C. AND THIRD PARTY DEFENDANT LAWYERS,
EMPLOYEES OF THE THIRD PARTY DEFENDANT LAWYERS, MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS INC., MERSCORP HOLDINGS, INC.,
WILLIAM C. HULTMAN, BANK OF AMERICA, N.A., COUNTRYWIDE HOME LOANS,
INC., CWALT, INC., BANK OF NEW YORK MELLON, N.A., BRIAN MOYNIHAN,
ANGELO MOZILLO, DAVID A. SPECTOR, RHOENA RICE, AARON FORMBY, DEVRA
LINDGREN, JOHNNY RICHARD HILLBERRY AND OTHERS NOT YET NAMED ARE
SPECIFICALLY RESERVED FOR AN ACTION TO BE COMMENCED IN THE UNITED
STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN
(ALL RIGHTS ARE RESERVED)

NOW COMES the purported Defendant and as Counterclaimant/Crossclaimant and Third-Party Plaintiff (hereinafter “Ms. Brown” or “Amy Jo Brown”) and, without waiving her objection to the standing of the Plaintiffs Bank of American, N.A. (hereinafter “BANA”) and The Bank of New York Mellon (hereinafter “BONY”), reserving her rights to plead any and all claims against these plaintiffs and third parties not joined herein in a separate action, and reserved all rights to which she is entitled in this action, including, but not limited to, her right to seek leave of the Court to amend the pleading in the interests of justice and to have the pleadings amended to conform to the proof at trial, amends her answer and affirmative defenses for a second time, amends her counterclaims, files her initial cross claims and amends her Third Party Complaint to include certain now identified parties reserved as “The Real Party or Parties in Interest in these proceedings, yet to be identified,” reserving her claims against certain of the initial Third Party Complaint for proceeding in the United States District Court for the Eastern District of Wisconsin and shows the Court:

ANSWER

1. Responding to the allegations in paragraph 1 of the Complaint, denies paragraph 1 in its entirety and as specifically set forth herein and puts Plaintiff to its proof as to every element necessary to establish the validity of the debt which it purports to be collecting and the basis for its claim of standing to proceed in this action, affirmatively alleging of her own personal knowledge, except where alleged upon information and belief:

a. BANA is not the “servicer” of any Mortgage Loan obligation owed to BONY “as trustee for the Certificateholders of CWALT, Inc. Alternative Loan Trust 2004-35T2 Mortgage Pass Through Certificates, Series 2004-35T2” (hereinafter the “CWALT Trust”) because the Mortgage Loan was not conveyed to the Trustee as required by Section 2.01 of the Pooling and Servicing Agreement (hereinafter the “PSA.”)

b. Section 2.01 of the PSA requires conveyance of the Mortgage Loan:

(1) by the endorsement and delivery of each note by law in accordance with Section 2.01 of the PSA, which provides, in relevant part:

SECTION 2.01. Conveyance of Mortgage Loans.

(c) In connection with the transfer and assignment set forth in clause (b) above,

the Depositor has delivered or caused to be delivered to the Trustee . . . for the benefit of the Certificateholders the following documents or instruments with respect to each Mortgage Loan so assigned.

(i)(A) the original Mortgage Note endorsed by manual or facsimile signature in blank in the following form: “Pay to the order of _____ without recourse,” with all intervening endorsements showing a complete chain of endorsements from the originator to the Person endorsing the Mortgage Note (each such endorsement being sufficient to transfer all right, title and interest of the party so endorsing, as noteholder or assignee thereof, in and to that Mortgage Note); . . .

In addition, in connection with the assignment of any MERS Mortgage Loan, each Seller agrees that it will cause, at the Trustee’s expense, the MERS® System to indicate that the Mortgage Loan sold by each Seller to the Depositor have been assigned by that Seller to the Trustee in accordance with this Agreement . . . for the benefit of the Certificateholders by including . . . in such computer files the information required by the MERS® System to identify the series of Certificates issued in connection with such Mortgage Loans. Each Seller further agrees that it will not, and will not permit the Master Servicer to, and the Master Servicer agrees that it will not, alter the information referenced in this paragraph with respect to any Mortgage Loan sold by such Seller to the Depositor during the term of this Agreement unless and until such Mortgage Loan is repurchased in accordance with the terms of this Agreement.

- c. The Mortgage Note attached to the Complaint as Exhibit B was not endorsed.
- d. A copy of the Mortgage Note was produced for Ms. Brown’s inspection on February 23, 2012 and was claimed to be the “original” note and it was not.
- e. The copy of the Mortgage Note produced on February 23, 2012 for inspection and falsely represented to be the “original” was a recently printed image of the Mortgage Note on which Ms. Brown’s signature had been generated by a printer in a shade of blue.
- f. Ms. Brown signed the Mortgage Note on September 17, 2004 in black ink.
- g. The copy of the Mortgage Note with displaying a blue ink signature was misrepresented as having been endorsed on the reverse side by the facsimile of initials above a

signature line reading “David A. Spector, Managing Director of Countrywide Home Loans, Inc., a New York corporation doing business as America’s Wholesale Lender.”

h. The explanation for there being no endorsement on the copy of the note uttered in these proceedings as Exhibit B to the Complaint was offered: the note was endorsed on reverse side and the reverse side of the note was not copied when Exhibit B was uttered into the record as an attachment to the Complaint.

I. In connection with its Motion for Summary Judgment, BANA produced the Affidavit of “Johnny Richard Hillberry” (hereinafter “Hillberry”) purporting to be “Assistant Vice President” of BANA.

j. Hillberry purports to identify Exhibit G, which is similar to the copy of the second version of the note uttered in these proceedings, but is a third version of the note because the third version of the copy of the note has bar codes impressed on the first page of the copy of the note.

k. On Exhibit G to the Hillberry Affidavit, a mirror image of the facsimile endorsement described at l.g., above is plainly visible on second page of the copy of the note, by which the reverse side “endorsement” bled through to the front of the page.

l. On Exhibit B attached to the Complaint there was no trace of any bleeding through of any inked information from the reverse side of the second page of the note.

m. There are no bar codes on the first page of Exhibit B attached to the Complaint.

n. There were no bar codes on the first page of the “original” note produced for inspection on February 23, 2012.

o. There are three versions of copies of Ms. Brown’s mortgage note and none of the copies are believed to be copies of the original note, which was required to have been endorsed and delivered for conveyance to the Trustee under Section 2.01 of the PSA.

p. The following endorsements were required to be placed on the Mortgage Note prior to its delivery to the Trustee in accordance with Section 2.01 of the PSA (1) the endorsement from the originator to the Seller; (2) the endorsement from the Seller to the Depositor; (3) the endorsement from the Depositor to the CWALT Trust in blank.

q. The CWALT Trust was not funded as required by the conveyance of the Mortgage

Loan according to the terms of Section 2.01 of the PSA and failed as a matter of law to create an enforceable interest in the Mortgage Note, which would require the chain of endorsements to read Originator to Seller to Depositor to the CWALT Trust “in blank.”

r. In order to attempt this second foreclosure of Ms. Brown’s home, BANA relies on the uttering of forged documents to engage in unconscionable debt collection of a debt claimed to have been originated by a note made payable to a trade name not registered in the State of Wisconsin and which trade name had no legal capacity to enter into a contract or take an interest in Wisconsin lands in its name or by nominating MERS.

s. Notwithstanding 1.a. through 1.r., above, BANA is acting as a debt collector within the meaning of 15 USC sec. 1662, et seq. because it claims that it is attempting to collect a debt purportedly owed to a third party, BONY as trustee for the CWALT Trust, which debt is disputed as being void, payments thereon were terminated when Ms. Brown first realized that she had been defrauded as to the nature of the purported contract for a mortgage loan and BANA succeeded by merger to the servicing rights of a purported mortgage contract which was void ab initio for fraud in the inducement and payments upon which had been declared to be in default almost two (2) years before the merger.

t. BANA’s debt collection efforts are based upon a fraudulently originated mortgage loan purportedly made by America’s Wholesale Lender (hereinafter AWL), which was fraudulently identified at the closing of the purported loan transaction on September 17, 2004 as a corporation of the State of New York and has never been the registered trade name for Countrywide Home Loans, Inc. (hereinafter CHL) in the State of Wisconsin.

u. Under Wisconsin law, trade names, also known as a “doing business as (d/b/a)” names do not have the legal capacity to enter into contracts, including contracts to loan money, hold any interest in lands or sue or be sued.

w. BANA is acting solely and exclusively as servicer of a Mortgage Loan never conveyed to the CWALT Trust, upon documents which it has instructed or allowed to be forged: specifically, three (3) different versions of copies of the mortgage note which have been produced in these proceedings and a purported mortgage assignment from Mortgage Electronic Registration Systems, Inc. (hereinafter “MERS”) as nominee for a trade name (which mortgage

assignment was created by an attorney who was employed by BANA's law firm in these proceedings when the assignment of mortgage was created by its law firm and signed by the employees of BAC Home Loans Servicing, LP (hereinafter "BAC".)

x. Under the terms of the PSA, Countrywide Home Loans Servicing, LP (hereinafter CHLS), a Texas limited partnership, was the Master Servicer.

y. On April 27, 2009, CHLS recorded a name change to BAC with the Texas Secretary of State.

z. On July 1, 2011, BAC merged with BANA.

aa. Denies that BANA has principal offices at 7105 Corporate Drive PTX-B-209 in Plano, Texas 75024 and affirmatively alleges that the principal office of BANA are located at 100 N. Tryon Street in Charlotte, North Carolina 28202.

bb. Denies that BONY is located at 7105 Corporate Drive PTX-B-209 in Plano, Texas 75024 and affirmatively alleges that the principal offices of BONY are located at One Wall Street in New York, New York 10286.

cc. Denies that CWALT Trust has any physical location, existing only on paper and in electronic form by fraudulent filings with the Securities and Exchange Commission (hereinafter the "SEC.")

dd. Denies that Ms. Brown is in default on any payments owed to BANA, BONY or the CWALT Trust.

ee. Upon information and belief, denies that BONY as purported Trustee of the CWALT Trust has authorized or that the PSA authorizes BANA to proceed in this action without the Trustee's authorization because the Mortgage Loan was never conveyed to the Trustee in accordance with the PSA.

ff. Countrywide Home Loans, Inc. (hereinafter "CHL") is the named seller of mortgage loan obligations to the "depositor," according to the CWALT Trust's supplement to the prospectus electronically filed with the SEC dated September 23, 2004.

gg. BONY is the named Trustee in the PSA for the CWALT Trust.

hh. Upon information and belief, BONY is unaware of this foreclosure action brought by BANA, first as servicer as successor by merger to BAC and in which BANA now claims to be

the owner and holder of the note in its own identity and capacity and not in its originally-pleaded representative capacity, as “servicer” for BONY by its brief in support of Summary Judgment dated September 13, 2012.

ii. BONY is being served with this action upon its President and CEO, Gerald Hassell, at One Wall Street, in New York, New York 10286 in its capacity as Trustee as a Third Party Defendant for Quiet Title (Count Three below) and in its corporate capacity for fraud (Count Two below.)

jj. CHL is a New York corporation, registered to do business in the State of Wisconsin and will be served on its registered agent: C T Corporation System, 8040 Excelsior Drive, Suite 200, Madison , Wisconsin 53717.

kk. CHL is the named seller of the Mortgage Loan procured by fraud in the inducement. Ms. Brown unwittingly entered into a sham mortgage loan transaction in which AWL was identified as a New York corporation.

ll. CWALT, Inc. is a Delaware corporation which will be served with process on its registered agent: The Corporation Trust Company, at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

mm. CWALT, Inc. is the named depositor in the supplement to the securities prospectus dated September 23, 2004 and was required to convey the endorsed Mortgage Notes and the mortgage loan collateral files to the CWALT Trust by delivery to the named Trustee, BONY, in exchange for payment for the net offering proceeds from the sale of the securities also known as Certificates of Beneficial Interest (hereinafter “CBIs”).

nn. Upon receipt of the CBIs, CWALT, Inc. delivered the securities to CITIGROUP and Bear Stearns & Company, who were the “underwriters” of the securities offering.

oo. The underwriters, through their brokers and dealers, sold the securities to investors as investment grade securities, suitable investments for pension funds which may not invest in speculative investment instruments under the Employee Retirement Income Security Act of 1974 (ERISA.)

pp. The proceeds from the sale of the securities were first paid to the underwriters, which charged their fees, and then the net offering proceeds were paid to CWALT, Inc., the depositor,

which charged its fees, and then paid the net offering proceeds to CHL.

qq. Upon information and belief, CHL was paid in full from the net offering proceeds from the sale of the CBIs and is owed nothing by Ms. Brown.

rr. CWALT, Inc. received its fees for the securitization.

ss. CHL is a subsidiary of BANA.

tt. CWALT, Inc. is a subsidiary of BANA.

uu. BONY, as trustee of the CWALT Trust, remits net revenues from the monthly distributions received from the collection of mortgage payments by the servicer.

ww. CWALT, Inc. failed to convey the Mortgage Loan to the CWALT Trust under the PSA as required by its role as the named “depositor.”

xx. When the credit rating of the Countrywide entities, consisting of the subsidiaries of Countrywide Financial, Inc. (hereinafter “CFI”) fell below A-, the standard of credit worthiness required by hundreds of PSAs which CHL, Countrywide Bank, FSB, and other CFI subsidiaries were required to maintain, BANA acquired CFI and its subsidiaries and became liable for the repurchase of the billions of dollars in securities issued by the CWALT Trust and held by BONY as Trustee of the purported Real Estate Mortgage Investment Conduit (REMIC) Trusts.

yy. A REMIC Trust receives preferred tax status under 26 USC sec. 860D, provided that the REMIC is fully funded within three (3) months from the closing date or the Trustee receives a replacement asset for a nonconforming or nonperforming asset upon the issuance of a legal opinion from, under this PSA, SIDLEY AUSTIN, LLP, that the replacement of any asset will not impair the REMIC Trust’s status as a passive entity from which income is passed through to the holders of the CBIs.

zz. The failure of CFI and its subsidiaries to maintain a standard of credit worthiness of A- or above and a net worth above the amount required by the PSA, resulted in BANA acquiring CFI for Four Billion Dollars (\$4,000,000,000.00) in BANA stock, known as a stock swap, which was consummated in 2008.

Shareholders of Countrywide will receive 0.1822 of a share of Bank of America stock in exchange for each Countrywide share. The deal is expected to close in the third quarter [of 2008] and to be neutral to Bank of America earnings per share in 2008 and lift earnings per share in 2009, excluding buyout and restructuring costs.

http://www.nytimes.com/2008/01/11/business/worldbusiness/11iht-bofa.3.9157464.html?_r=0

aaa. BANA assumed the legal liabilities for the business activities of the CFI entities.

bbb. CFI ceased to exist as a bank holding company and all of its subsidiaries became subsidiaries of BANA on April 27, 2009. (Exhibit A.)

ccc. In the course of the acquisition of CFI and its subsidiaries, BANA, which had previously held Two Billion Dollars (\$2,000,000,000.00) in CFI preferred stock (and, upon information and belief had provided warehouse lines of credit to Countrywide Bank, FSB, CHL, and other CFI subsidiaries) BANA knew that its newly acquired subsidiaries had generally failed to convey the Mortgage Loans as required by hundreds of PSAs and that BONY had not performed its duties as Trustee to timely assure that it had received the conveyance of properly endorsed notes and mortgage assignments.

ddd. Upon information and belief, BONY and BANA then conspired to conceal the securities fraud committed against the homeowners and investors; there was fraud in the inducement of homeowners whereby they signed notes and mortgages which were never to be held as whole loan but were to be bundled and sold as part of a series of securities, a fact was concealed from them; and, after which the CFI entities had generally failed to endorse the notes and convey the loans from originator to seller to depositor to the trusts, prior to the trust closing date, and the three (3) months thereafter allowed to complete the funding of the trust, defrauding the investors whose CBIs are not backed by lawfully conveyed Mortgage Loans and cannot now be backed by new collateral because the CWALT Trust failed to timely comply with the PSA and the REMIC requirements.

eee. The investors had purchased CBIs under the affirmative misrepresentation that the securities were backed by enforceable mortgage loans and that the trusts were not subject to taxation for ongoing business activities and both BONY and BANA were liable for billions of dollars in economic damages to the investors for malfeasance and fraud, respectively.

fff. As of April 27, 2009, BAC, then a subsidiary of BANA prior to the merger on July 1, 2011, was then used by BANA to forge thousands of mortgage assignments to make it appear that it or the Trustee of the REMIC Trusts, usually BONY, were entitled to foreclose on real

estate in judicial foreclosure states such as Wisconsin.

ggg. Employees of subsidiaries of CFI entities began to forge endorsements on never-before-endorsed mortgage notes, as needed at the request of (BAC and then BANA) lawyers, who were instructed by the servicer to foreclose on homes after the mortgage assignments were attacked as being forgeries, in order to make it appear that the notes had been endorsed in favor of any party claiming to be in possession of a copy of the note.

hhh. AWL could not endorse Ms. Brown's note because it had no legal capacity to do so, being only a trade name registered in a few states and not in Wisconsin and the chain of endorsements required by the PSA was impossible to provide.

iii. Upon information and belief, CHL never endorsed and delivered Ms. Brown's fraudulently originated **original** note to the depositor, CWALT, Inc., which, in turn, did not endorse and deliver the **original** note to the CWALT Trust by timely endorsement and delivery to BONY as required by the PSA, which is the burden of BONY and BANA to prove in these proceedings.

jjj. AWL did not loan any money to Ms. Brown on September 17, 2004 because it did not exist. Rather, upon information and belief, AWL issued a check drawn on an account of an entity not identified in these proceedings to Milwaukee Title Company, Inc., upon which disbursements at the closing were purportedly made.

kkk. The original lender is the party which provided the check at the closing has not been disclosed, despite Ms. Brown's timely request for its identity in her Debt Validation Request dated August 6, 2011, but, upon information and belief, CHL was probably the originator of the transaction.

lll. If CHL advanced the funds for the closing, it did so with intent to defraud Ms. Brown into believing that AWL was her "lender" by using an unregistered trade name and claiming that AWL was a New York corporation, when CHL knew that AWL did not exist.

mmm. The note and mortgage given by Ms. Brown to a nonexistent entity is void because a nonexistent entity cannot, as a matter of law, transact any business in Wisconsin or be granted an interest in Wisconsin lands.

nnn. The only bases for recovery of funds advanced by the original lender or the

subsequent purchaser of the obligation for value would be by a claim of unjust enrichment or to seek equitable assignment of Ms. Brown's preexisting mortgage by a real party in interest which is owed money by Ms. Brown.

ooo. No holder in due course of Ms. Brown's *original* note has appeared herein and her claims and defenses are viable as against every party in the required chain of endorsements in the process of converting her Mortgage Loan into a part of a series of securities.

ppp. The attempt of BANA to proceed as servicer for BONY as Trustee of the CWALT Trust for the benefit of the holders of CBIs is a sham and a fraud because the CWALT Trust was never funded as required by the PSA.

qqq. Upon information and belief, CHL, which is not a party to this action and through which BANA does not claim its standing by merger, but which is an alter ego of BANA since its acquisition of the CFI, may have originated the loan but the mortgage note and mortgage are void as having been made payable to and offered as security to an entity which lacked the legal capacity to enter into a contract with Ms. Brown.

rrr. Upon information and belief, no funds were provided at the closing on September 17, 2004 and the closing check was "floated" (a/k/a "kited") through the Federal Reserve System on a 90 day discount until CHL monetized the loan purchase price by receipt of funds from the sale of the securities.

sss. Upon information and belief, the underwriters of the CBI issue were insured by credit default swaps (hereinafter "CDS") by American International Group (hereinafter "AIG"), were paid in full by the United States Treasury under the Troubled Asset Relief Program (hereinafter "TARP") in the last quarter of 2008, before Ms. Brown stopped making the payments in May, 2009, having learned that her loan had been a sham and a fraud to obtain her signature on loan documents for the purpose of bundling them into securities, which was never disclosed to her and was an essential element of the transaction which was concealed from her by the false claim that AWL was her lender.

ttt. Upon information and belief, the Certificateholders are insured against their losses by policies of Errors and Omissions Insurance and fidelity bonds for the acts and omissions of the Master Servicer, now BANA, which is seeking to enforce a loan obligation which was never

lawfully conveyed to the CWALT Trust.

uuu. BANA, as the successor in interest to the servicer, BAC Home Loans Servicing, LP (hereinafter “BAC”) can only claim to be the servicer of loans which have been timely and lawfully conveyed to the CWALT Trust.

vvv. There is no allegation in the Complaint that the fraudulently originated mortgage loan purportedly made by AWL was funded by CHL or that the loan was funded by the sale of CBIs by CHL, underwritten by Citigroup and/or Bear, Stearns & Co., Inc., after the note and mortgage were executed in favor of the nonexistent AWL, which is required to demonstrate BANA’s standing as servicer for the loan.

www. Under the Wisconsin Uniform Commercial Code and the PSA, the BANA must allege not only that it is servicing a loan for BONY, as Trustee for the CWALT Trust, but must also allege that the seller of the loans (CHL) endorsed and delivered the note and assigned the mortgage to the depositor, which then endorsed and delivered the note and assigned the mortgage to the Issuer in exchange for the securities before the closing date of the CWALT Trust, on December 1, 2004, endorsed in blank, along with the entire loan file, that the loan remains unpaid and that BANA is authorized under the terms of the PSA to commence this action for the benefit of holders of the CBIs.

xxx. BANA fails to make the required allegations to support its standing to proceed in this action as set forth at 1.www., above, and none of the copies of three (3) versions of the mortgage note purporting to be copies of the *original* note bear the endorsements required to show that Ms. Brown’s loan was conveyed to the CWALT Trust within three (3) months of the trust closing date.

yyy. BANA attaches an unendorsed note to the Complaint as Exhibit B, makes no allegation that the note was delivered to the CWALT Trust, attaches a fraudulent assignment of mortgage, which was created by its own law firm and dated 4 years after the closing date of the CWALT Trust, contrary to the terms of the PSA, displaying the signatures of employees of BAC Aaron Formby and Rhoena Rice fraudulently claiming to be officers of Mortgage Electronic Registration Systems, Inc. the execution of which constitutes a violation of Wis. Stats. sec. 943.38(1).

zzz. Upon personal knowledge, Amy Jo Brown signed a mortgage note in favor of AWL in black ink and she further affirmatively alleges, upon information and belief, that the mortgage note taken by AWL is not an enforceable instrument because America's Wholesale Lender has no capacity to enter into a contract and is a "doing business as name" for the CHL, does not exist as a legal entity and lacks the capacity to enter into contract with Ms. Brown or to contract to make MERS its nominee and cannot borrow and lend money, sue and be sued, or be the grantee of a mortgage, by nominating MERS or otherwise; she further affirmatively alleges, upon information and belief, that AWL, lacking the capacity be sued, was a business name created to conceal the real name of the originating Lender against whom she could proceed for the remedies of rescission, restitution and recoupment because a trade name can neither sue or be sued.

aaaa. Upon information and belief, CHL was the originating Lender and is joined in these proceedings for relief from the fraud by which she was induced to enter into a contract, the essential terms of which and the parties thereto were concealed from her.

bbb. All three versions of the mortgage note are forgeries in violation of Wis. Stats. sec. 943.38(1).

ccc. David A. Spector was never a managing director of CHL but was a managing director of Countrywide Financial, Inc. from May, 1990 to August, 2006.

ddd. The mortgage assignment is a forgery in violation of Wis. Stats. sec. 943.38(1) as having been fraudulently executed by employees of BAC on a form created by BANA's lawyers and fraudulently purports to transfer the mortgage note to BONY by assignment of mortgage "together with the note and indebtedness it secures" on September 16, 2009, almost three years after David A. Spector left Countrywide Financial, Inc.

eee. The forged documents have been uttered into the public record in violation of Wis. Stats. sec. 943.38(2).

2. Responding to the allegations in paragraph 2 of the Complaint and denies paragraph 2 in its entirety, puts Plaintiff to its proof as to every element necessary to establish its standing to proceed in this action and reincorporates by reference as if fully set forth herein, the denials and affirmative defenses set forth in paragraphs 1., above, and further affirmatively alleges, on personal knowledge or upon information and belief, as the case may be :

a. Upon personal knowledge of the PSA and as a matter of law, BONY is prohibited as a matter of law from attempting to administer a trust asset which is founded upon a fraudulent transaction and a forged mortgage note because to do so would be an ultra vires act and a breach of its fiduciary duty.

b. Upon information and belief, denies that BONY has or is able to authorize the commencement or continuation of these proceedings to collect a debt for which part of the evidence is a forgery.

c. Upon personal knowledge that, under the PSA, the CWALT Trust cannot accept assets into the trust which are not transferred within three (3) months of the closing date of the Trust or such additional grace period as is allowed by law for proper transfer of the asset under 26 USC sec. 860D, without an opinion letter from the CWALT Trust's counsel, SIDLEY AUSTIN, LLP, which has neither been sought nor provided.

d. Upon personal knowledge that, according to the PSA, the mortgage note must be endorsed from the originator to the sponsor, from the sponsor to the depositor and from the depositor to the CWALT Trust or "endorsed in blank" but Exhibit B attached to the Complaint is a recently created forgery, Exhibit G attached to the Affidavit of Johnny Richard Hillberry is a different version of the note than that which was presented for Ms. Brown's inspection on February 23, 2012 as the "original note", which had no bar coding, was on bright, white, unaged paper and displayed a blue ink signature in a color blue which is known to be created by computer toner ink and was a forgery.

e. Upon personal knowledge that the forged mortgage assignment purports to transfer "the note and the indebtedness it secures" on September 16, 2009, more than four years after the loan was purportedly made and at least 45 months after the mortgage loan could no longer be received by the Trustee without the compliance described at 2.c., above.

f. Upon information and belief, the original note with the endorsements required by the PSA and the assignment of the mortgage was never delivered to the CWALT Trust as required by the PSA and 26 USC sec. 860D.

g. Upon personal knowledge, Ms. Brown never borrowed any money from AWL.

h. Upon information and belief, CHL (or any other "originating Lender") has been paid

in full by the sale of the CBIs.

I. Upon information and belief, Ms. Brown's loan and many other loans in the CWALT Trust have been paid in full by CDS, TARP and/or HUD insurance and/or mortgage insurance and BANA cannot be the servicer for a loan which has been paid in full.

j. Upon personal knowledge, Amy Jo Brown has already paid approximately \$150,000.00 on a void mortgage note, which was never owed to AWL, which note is not now owned by or owed to the party for which the Plaintiff claims to be the "servicer:" the CWALT Trust through its purported Trustee, BONY.

k. As a matter of fact and law, that Mortgage Electronic Registration Systems, Inc. (MERS) did not assign the mortgage to the CWALT Trust.

l. Upon personal knowledge, the mortgage in which MERS was nominated (Exhibit C attached to the Complaint) was fraudulently claimed to have been made by AWL, a party without legal capacity to lend her money, which did not lend her any money and could not record an interest on Wisconsin lands, either in its own name or by "nomination of MERS" as "mortgagee of record."

m. Further affirmatively alleges, upon personal knowledge, that AWL is not a member of the MERS® System (because it cannot be, having no legal existence.)

n. Amy Jo Brown affirmatively alleges, as a matter of law, that the operation of the MERS parallel private recording system in place of the duly-elected and constitutionally authorized Registers of Deeds for counties in the State of Wisconsin (cf. Chapter 59 of the Wisconsin Statutes, particularly at Wis. Stats. sec. 59.49, et seq.) is illegal and void and any mortgage containing the "MERS as nominee provision" is void as against public policy.

o. Amy Jo Brown further affirmatively alleges the use of "MERS as nominee for" violates the sovereignty of the State of Wisconsin and its laws.

p. Amy Jo Brown further affirmatively alleges that MERS is not authorized to do business in the State of Wisconsin as a private corporation and that its nominal holding of record title was a scheme to defraud to allow unlawful debt collection practices by a variety of entities which sought to conceal their true identities from government regulators, homeowners and the courts of the State of Wisconsin and is void as against public policy.

3. Admits paragraph 3.
4. Denies paragraph 4 and affirmatively alleges that she is an unmarried woman.
5. Responding to the allegations in paragraph 5 of the Complaint and affirmatively alleging, on personal knowledge or upon information and belief, as the case may be, and denies paragraph 5 in its entirety, putting Plaintiff to its proof as to every element necessary to establish its standing to proceed for relief in this action:
 - a. MERS is a sham organization and front for securitization trusts, the mortgage in which MERS was nominated was purportedly nominated a party without legal capacity to loan money and could not have been and never was a member of the MERS® System.
 - b. The operation of a parallel private recording system to the duly-elected and constitutionally authorized Registers of Deeds for counties in the State of Wisconsin is illegal and void. Chapter 59 of the Wisconsin Statutes, particularly at Wis. Stats. sec. 59.49, et seq. preempts and precludes the legal effect of private recording system for lands in the state of Wisconsin.
 - c. MERS violates the sovereignty of the State of Wisconsin and its laws and further not authorized to do business in the State of Wisconsin as a private corporation, unless it loaned its own money, which it does not do and never has done.
 - d. MERS does not loan money, does not receive payments and does not own or hold mortgage notes.
 - e. The mortgage interest purportedly held by MERS for AWL is void ab initio, void as against public policy and the assignment from MERS is, likewise, void and without any force and effect.
6. Responding to the allegations in paragraph 6 of the Complaint and affirmatively alleging, on personal knowledge or upon information and belief, as the case may be, and denies paragraph 6 in its entirety, putting Plaintiff to its proof as to every element necessary to establish its standing to proceed for relief in this action:
 - a. MERS is a sham organization and front for securitization trusts.
 - b. Upon information and belief the mortgage in which MERS was nominated was in favor of a party, Secured Funding Corporation, which was without legal capacity to do business

in the State of Wisconsin (its lending license had been revoked in the State of California at the time this loan was made) and is not and never was a member of the MERS® System.

c. The operation of a parallel private recording system is contrary to the duly-elected and statutorily authorized Registers of Deeds for counties in the State of Wisconsin is illegal. Chapter 59 of the Wisconsin Statutes, particularly at Wis. Stats. sec. 59.49, et seq., preempts the operation of a private recording system for lands in the State of Wisconsin is void as against public policy.

d. MERS violates the sovereignty of the State of Wisconsin and its laws and is further not authorized to do business in the State of Wisconsin as a private corporation and cannot own an interest in lands unless it loaned its own money, which it does not and never has done.

e. MERS violates the sovereignty of the State of Wisconsin and its laws and further not authorized to do business in the State of Wisconsin as a private corporation, unless it loaned its own money, which it does not do and never has done.

f. MERS does not loan money, does not receive payments and does not own or hold mortgage notes.

g. The mortgage interest purportedly held by MERS for AWL is void ab initio, void as against public policy and the assignment from MERS is, likewise, void and without any force and effect.

h. Denies paragraph 6 in its entirety and affirmatively alleges that Exhibit A is hearsay.

i. HSBC Mortgage Services, Inc. did not loan Ms. Brown any money as and for a second mortgage on her home and no money is owed by her to it.

7. Denies that she received any value from AWL and that the note is void for lack of consideration, affirmatively alleges that the note is a sham and a fraud as set forth in paragraphs 1 and 2, above, and that the copy of the note attached to the Complaint as Exhibit B and presented to her on February 23, 2012 is a forgery.

8. Denies paragraph 8 and reincorporates her Answer to the Complaint at paragraphs 2 and 5 by reference as if fully set forth herein.

9. Denies paragraph 9 and reincorporates her Answer to the Complaint by at paragraphs 1, 2, and 5 by reference as if fully set forth herein.

10. Denies paragraph 10 its entirety and affirmatively alleges, upon personal knowledge, that she owes nothing to the BANA or to BONY as the Trustee of the CWALT Trust and that pending the Complaint is founded upon forgeries uttered for the purpose of defrauding her and this Court. In support of this allegation, she reincorporates her Answer to the Complaint at paragraphs 1, 2, and 5 by reference as if fully set forth herein.

11. Admits that she received correspondence from Bank of America, N.A., purporting to be a debt collector and made a Debt Validation Request under the Fair Debt Collection Practices Act (FDCPA at 15 USC sec. 1692, et seq.) to which BANA responded stating that she should disregard the letter notifying her that it was her new mortgage servicer and that thereafter, she was served with the Summons and Complaint in this matter in violation of the FDCPA as detailed in Count One of the Counterclaims, Crossclaims and Third Party Complaints below.

12. Responding to the allegations in paragraph 12 of the Complaint and affirmatively alleging, on personal knowledge or upon information and belief, as the case may be, and denies paragraph 12 in its entirety, putting Plaintiff to its proof as to every element necessary to establish its standing to proceed and seek relief in this action:

a. Admits paragraph 12 only insofar as she admits that she resides at her homestead located at 15945 Ridgefield Court in Brookfield, Wisconsin and that the legal description of her homestead appears to be correct, without admitting or denying that the legal description is, in fact, correct.

b. Denies that the real estate is subject to this action in any way, continuing to object to the standing of the putative Plaintiffs and affirmatively alleges that they are not entitled to any equitable remedy, including foreclosure, because they have acted fraudulently, contrary to the principles of equity and must be barred from receiving equitable relief. See Keystone Driller v. General Excavator Co., 290 U.S. 240 (1933.)

c. Both parties have legal capacity to be sued, however, and the purported Defendant accepts their choice of forum, without accepting the jurisdiction of the Court to grant any remedy to the putative Plaintiffs for their claims founded on forged documents by which BANA attempts to collect a debt which was void ab initio for fraud in the origination as described herein.

13. Denies paragraph 13 wherein the putative Plaintiffs seek an admission they may

“elect” the remedy of foreclosure. Foreclosure is an equitable remedy and BANA and BONY come to this court with unclean hands. Even if they had standing to bring this action, which they do not, their use of forged documents to attempt to proceed herein bars any relief in equity, including the equitable remedy of foreclosure.

14. Denies paragraph 14, lacks sufficient knowledge as to whether MERS and HSBC Bank have been served with process to make them subject to the personal jurisdiction of this Court and affirmatively re-alleges and reincorporates by reference each and every allegation of paragraphs 1-13 of the foregoing Amended Answer, Counterclaims and Crossclaims which will be served upon MERS and HSBC Bank so that this matter may proceed to adjudication.

AFFIRMATIVE DEFENSES

15. Plaintiffs lack standing to sue Amy Jo Brown and the foreclosure Complaint must be dismissed.

16. Plaintiffs have unclean hands and are not entitled to the equitable remedy of foreclosure.

17. The mortgage contract was void ab initio because the a note and mortgage was given to a nonexistent entity.

18. The mortgage contract is void for failure of consideration because the AWL did not loan Ms. Brown any money.

19. The mortgage contract is void or voidable for fraud in the inducement because the real party in interest was intentionally concealed from Ms. Brown and the fraud was not discovered until almost 4 years after the date of the closing.

21. The mortgage contract is void or voidable for fraud in the inducement because a key element underlying the contract fraudulently concealed: that the loan obligation not only did not have a low probability of being sold as a whole loan, but would be converted to a series of securities, was not disclosed and had that element been disclosed, Ms. Brown, would not have entered into the contract.

22. The mortgage loan has been paid in full by the process of securitization.

23. The mortgage note has been discharged by the alteration of the note through forgery.

COUNTERCLAIMS, CROSSCLAIMS AND THIRD PARTY COMPLAINTS
COUNT ONE: VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
(FDCPA) at 15 USC sec. 1692, et seq. AS TO BANA

24. The facts alleged in paragraphs 1-14 above are incorporated by reference as if fully set forth herein.

25. This Court has concurrent jurisdiction with the United States District Court for the Eastern District of Wisconsin to provide relief under the Fair Debt Collection Practices Act (FDCPA) at 15 USC sec. 1692, et seq.

26. Plaintiff BANA is a debt collector as defined in the Fair Debt Collection Practices Act (FDCPA) 15 USC sec. 1692, et seq. insofar as it purports to collect debts owed to certain REMIC Trusts of which it claims to be the “servicer” when it undertakes to collect a debt which it alleges to have been in default at the time it became the servicer by merger with BAC.

27. A “servicer” for a REMIC Trust “collects and tracks payments, distributes collection and pursues legal action when necessary” as alleged by the Plaintiff in paragraph 2 of its Complaint.

28. 15 USC sec. 1692e provides generally:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: . . .

and 15 USC sec. 1692e(2) provides, in relevant part:

(2) The false representation of—

(A) the character, amount, or legal status of any debt . . .

29. In June, 2011, before this second attempt to foreclose on Amy Jo Brown’s home commenced, Bank of America Home Loans contacted Amy Jo Brown and instructed that the “servicer” was going to change from BAC to BANA.

30. Ms. Brown then had the right to request the validation of her debt, in accordance with the Fair Debt Collection Practices Act (FDCPA) within 30 days of the receipt of the notice of change of servicer.

31. Ms. Brown then sent a Debt Validation Request to the address to which the inquiry

was to be directed and demanded the chain of ownership of the loan from the original lender to the CWALT Trust and disputed the debt as having been paid in full at the time of the securitization when the CBIs were issued and sold.

32. Bank of America Home Loans acknowledged receipt of the Debt Validation Request on August 16, 2011 and stated:

We are in the process of obtaining the documentation and information necessary to address your questions. We appreciate your patience as we research your request. You can expect a complete response within twenty (20) business days.

33. On August 29, 2011, Bank of America Home Loans sent the following response to the Debt Validation Letter:

Please accept our sincere apologies for any inconvenience you may have experienced due to Fair Debt letter you received . We request you to disregard the letter and we are working to correct the issue. We would like to assure you that we strive to provide the highest level of service, and we look forward to meeting your needs in the future.

34. The response set forth at 33, above, is not a proper response to a Debt Validation Request and debt collection action must cease until a complete response is made. 15 USC sec. 1692g(5)(b)

35. Contrary to the provisions of the FDCPA, which required that the information demanded by the Debt Validation Request be provided before any collection action is permitted to continue, BANA commenced this (second) foreclosure action against Ms. Brown by filing a Summons and Complaint with this Court on September 19, 2011.

36. Despite the appearance of counsel for Ms. Brown, BANA contacted Amy Jo Brown just before Christmas in 2011, who has been represented by counsel since October, 2011, and told her she had to make arrangements to move out of her home.

37. The Christmas contact of Ms. Brown, who is represented by counsel, was in violation of the FDCPA.

38. FDCPA provides at 1692(b)(6) that it is an unfair debt collection practice for Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall –

...

(6) after the debt collector knows the consumer is represented by an attorney with regard

to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to the communication from the debt collector.

39. BANA continued to contact Ms. Brown in violation of the FDCPA until the Counterclaim for FDCPA violations was filed on May 1, 2012, despite the fact that she was being represented by counsel and informed her on several occasions that if she would agree to a short sale of her home, she could avoid foreclosure, in violation of the FDCPA.

40. The initial Counterclaim and Third Party Complaint put BANA and its counsel on notice that “it and the (then) Third-Party Defendant BLOMMER PETERMAN, S.C. and the (then) Third-Party Defendant attorneys and non-attorney staff have committed numerous violations of the FDCPA, the specifics of each are too numerous to mention at this time and the failure to specifically plead each and every violation of the FDCPA, and by providing examples of the violations of the FDCPA at this time does not enumerate all of the instances of FDCPA violations in this case” at paragraph 65 of Ms. Brown’s Amended Answer, Counterclaim and Third Party Complaint filed on and served on May 1, 2012.

41. Because this action could not be commenced before a proper response to the Debt Validation Request was made by BANA, each and every court filing, court appearance and discovery action undertaken by BANA since August 29, 2011 is in violation of the FDCPA as an unconscionable practice.

42. Each and every contact with Ms. Brown by BANA, its subsidiaries, their employees, BANA’s attorneys and its employees with Ms. Brown directly while she has been represented by counsel is a further violation of the FDCPA.

43. Ms. Brown is entitled to her actual attorney’s fees and costs of defending this action, undertaken in violation of the FDCPA as well as her attorney’s fees to recover for the statutory damages for each FDCPA violation consisting of each court event scheduled and each legal document filed in this action while BANA remains in violation of the FDCPA as well as the attorney’s fees and legal expenses of discovering the information which BANA was required to provide in a proper response to the Debt Validation Letter as well as statutory damages for each event of direct contact of Ms. Brown when she was represented by counsel in violation of the

FDCPA (15 USC sec. 1692b(6) and her attorney's fees for collecting the statutory damages.

44. Statutory damages, actual damages, attorney's fees and litigation costs are continuing to accrue.

COUNT TWO:

**FRAUD AS TO BANA, MERS, BONY AS TRUSTEE AND CHL BY
COUNTERCLAIM, CROSSCLAIM AND THIRD-PARTY COMPLAINT**

45 . Amy Jo Brown incorporates and re-alleges paragraphs 1-44 in their entirety as if fully set forth herein.

46. BONY is the named Trustee in the PSA for the CWALT Trust.

47. It is believed that BONY is unaware of the violations of the FDCPA by BANA in the commencement and continuation of this action, first as servicer and now claiming to be the owner and holder of the note in its own identity and not in its representative capacity, by its brief in support of Summary Judgment dated September 13, 2012.

48. BONY is being served with this action upon its President and CEO, Gerald Hassell, at One Wall Street, in New York, New York 10286 as named Plaintiff and Counterclaim Defendant for Fraud and Quiet Title herein.

49. CHL is a New York corporation, registered to do business in the State of Wisconsin and will be served on its registered agent: C T Corporation System, 8040 Excelsior Drive, Suite 200, Madison , Wisconsin 53717.

50. CHL is a subsidiary of BANA and is the seller of the securities of the CWALT Trust, and, by pursuing this foreclosure, BANA has ratified the fraud of its subsidiary.

51. Upon information and belief, BONY is engaging in the CHL/BANA frauds because it knows that the mortgage notes and assignments of mortgages to the CWALT Trust have not been delivered in general and, in particular, Ms. Brown's mortgage note was not endorsed and delivered as required by the PSA, no valid mortgage assignment was ever granted and no valid mortgage assignment has been executed, the endorsement of the note and the execution of the mortgage assignment being forgeries.

52. CHL fraudulently obtained Ms. Brown's note and mortgage which had been made payable to an entity that CHL knew did not exist, AWL.

53. Ms. Brown's mortgage loan was induced by fraud by which Ms. Brown could not discover the identity of her original lender and further concealed the key feature of the loan that it was certainly going to be "securitized."

54. Had Ms. Brown known that her mortgage loan was going to be bundled with hundreds of other loans and converted into a series of securities and that the securities thus created would be sold to investors, she would not have entered into the transaction and would have sought other financing.

55. She was informed at closing that there was a probability of 25% or less that her mortgage loan could be "sold," but CHL knew that the loan would not be sold as a whole loan, but would be securitized.

56. There is a great difference between the rights of an obligor on the sale of a secured obligation and the rights of a homeowner whose home has been securitized, for examples:

(1) On the sale of a secured obligation, the attributes of the transaction would remain the same and payments would be made to a new party which would have the incentive to receive payments in lieu of resorting to the collateral, but when the loan is securitized in a PSA, the incentives are the opposite because the servicer of the loan is not the owner of the loan and the provisions of the PSA encourage the servicer to cause the loan to default;

(2) A secured obligation which has been sold to a new party are predictable and governed by existing law, whereas a securitized loan has multiple, competing interests, various types of insurances and guarantees and there is no incentive to keep the loan performing, when payments are more readily obtained by forcing a default; and

(3) There is one new owner of a loan which is sold, whereas there are hundreds of owners of CBIs, and a supermajority (66 and 2/3%) of the holders of the CBIs is required to instruct the Trustee to take action to remove a rogue servicer failing to service the loan in the interests of the investors as opposed to servicing the loan for primarily for its own pecuniary advantage. The information upon which they could take such an action is concealed by the servicer and the identities of the CBIs holders are never disclosed to the obligor or to each other, without a specific written request to the Trustee for the identities of the other CBI holders, which request would not be made in absence of the information that the servicer was acting against their

interests;

(4) Notwithstanding (3), above, both the obligor and the holders of the CBIs bear the losses of the misconduct of the rogue servicer, as in this case; the obligor must bear the burden of combating the origination, servicing and foreclosure frauds, as well as the unfair debt collection practices and the CBI holders must pay the rogue servicer for engaging in the misconduct which is concealed from them.

57. The frauds in this case are extraneous to the contract, Ms. Brown never having bargained for the securitization of her mortgage contract obtained by the deceit of the actual originator of the loan, believed to be CHL, concealing its identity behind a nonexistent entity which it pretended was a lawfully organized corporation of the State of New York.

58. The loan documents fraudulently procured from Ms. Brown unjustly enriched BANA's subsidiaries when CHL and CWALT, Inc. converted the mortgage obligation into a pool of securities for value and CHLS, now BANA by merger, retained valuable servicing rights on a void mortgage contract.

59. The mortgage assignment prepared by BANA's law firm in these proceedings is a forgery.

60. BANA now claims to *own* the forged mortgage note (brief of Christina Demakopoulos dated September 13, 2012) which is a continuation of the fraud.

61. As set forth in Digicorp, Inc. v. Ameritech Corporation, 262 Wis.2d 32, 662 N.W.2d 652 (2003), the five elements of fraud are met upon proof of these facts:

a. The counterclaim defendant's subsidiary made the representation of fact that AWL was the original Lender and that the mortgage loan had a probability of 25% percent or less of being sold and intentionally failed to disclose the identity of the originating Lender and the fact that the transaction was being undertaken for the purpose of securitization by which Ms. Brown lost valuable contract rights, some of which are partially described at paragraph 56, above. See Killeen v. Parent, 23 Wis. 2d 244, 127 N.W.2d 38 (1964).

b. The representations of fact were untrue.

c. The untrue representations were made by the counterclaim defendant's subsidiary knowing the representation was untrue or recklessly without caring whether it was true or false.

See Stevenson v. Barwineck, 8 Wis. 2d 557, 99 N.W.2d 690 (1959) (representations without sufficient basis are reckless) and BANA has ratified the misrepresentations of its subsidiary by proceeding on the note and continues to commit fraud upon this Court and Ms. Brown.

d. That the representations were made and continue to be made with intent to deceive and induce the plaintiff to act upon the false representations to the plaintiff's pecuniary damage. See Household Finance Corp. v. Christian, 8 Wis. 2d 53, 98 N.W.2d 390 (1959).

e. That the counterclaimant believed the representations to be true: that AWL was a New York corporation with the legal capacity to enter into contracts, had the legal capacity to loan money, had the legal capacity to be a grantee of an interest in lands through a nominee (MERS) which it had the legal capacity to nominate, that her loan had a low probability of being sold as a whole loan, when CHL always intended to securitize her loan and she relied on the misrepresentations when she signed the documents, when resulted in forgeries being created. See Household Finance Corp. v. Christian, 8 Wis. 2d 53, and Miranovitz v. Gee, 163 Wis. 246, 157 N.W. 790 (1916).

62. Furthermore, BANA seeks to have this Court rely upon the frauds and forgeries for the desired result of having this Court grant it the relief of foreclosure on a fraudulently induced loan, securitized without her knowledge, on forged documents for proof of its claim of ownership of the already-paid debt obligation, as to enforce its continuing false claim. Theft by deceiving another, without proof of agency is a recognized element of the crime of theft by fraud in Wisconsin, and BANA is attempting theft of her home on forged documents in order to have this Court award it title to her home by fraudulently representing itself as being the owner or holder of a secured debt obligation. State v. Timblin, 259 Wis.2d 299, 657 NW 2d 89 (Wis. Ct. App. 2002.)

63. Despite the fact that Ms. Brown is no longer relying on BANA's misrepresentations, she is suffering the pecuniary loss of having to pay her counsel for combating the continuing misrepresentations to this Court and is being deprived of the enjoyment of her home by the continuing assault upon her property rights by the fraudulent claims of BANA in its own identity and capacity and as servicer for the CWALT Trust to which the mortgage loan file was never delivered, after the fraudulent inducement, and now upon a forged note and mortgage

assignment.

64. CHL is joined by Third-Party Complaint upon the grounds that it is liable to the Certificateholders for any damages from the rescission of the fraudulently induced loan and restitution arising thereunder and is jointly liable for the with recoupment of Ms. Brown's consequential damages, has joint liability for punitive damages sought in this Count Two and is a necessary party on this Count Two.

**COUNT THREE: DECLARATORY JUDGMENT QUIETING TITLE
AS TO THE AWL/MERS MORTGAGE AND
THE CWALT TRUST FORGED MORTGAGE ASSIGNMENT
AS TO BANA, CHL, MERS AND BONY AS TRUSTEE OF THE CWALT TRUST**

65. Ms. Brown realleges paragraphs 1-64 and incorporates the allegations by reference as if fully set forth herein.

66. The mortgage given the AWL is void as having been granted to a party without capacity to own or hold a mortgage on Wisconsin lands.

67. MERS had no contract with the nonexistent AWL, which could not enter into contracts, and, therefore, the nomination of MERS as by AWL mortgagee was void.

68. The mortgage was fraudulently procured in the name of AWL by CHL so that it could securitize Ms. Brown's mortgage loan and is void for fraud in the inducement.

69. The assignment of mortgage executed by BANA employees and agents from MERS to BONY is a forgery and is void and must be stricken from the public records.

70. The lis pendens filed in connection with this action must be ordered released as based upon a forged mortgage assignment.

**COUNT FOUR: DECLARATORY JUDGMENT QUIETING TITLE
AS TO THE SECURED FUNDING CORPORATION/MERS MORTGAGE
AS TO MERS AND HSBC MORTGAGE SERVICES, INC.**

71. Ms. Brown realleges paragraphs 5 and 6 and incorporates the allegations by reference as if fully set forth herein.

72. The mortgage given in the name of MERS as nominee for Secured Funding Corporation is invalid because the second mortgage loan has transferred to a third party without

the lawful recording of a new mortgage assignment.

73. In addition to concealing the undisclosed securitizations of mortgage loans in furtherance of a scheme to destroy the land title records of the State of Wisconsin so that a private entity could control what is required by law to be public record, a further and additional purpose for the MERS nomination on mortgages was to avoid paying recording fees to the Wisconsin Registers of Deeds.

74. The MERS nomination was made for fraudulent purposes to conceal the identity of the real owner of the mortgage loan, to avoid paying recording fees and MERS is not licensed to do business in the State of Wisconsin and, therefore, cannot hold a mortgage in its name as the agent of the true owner of the mortgage.

75. Not being licensed to do business in the State of Wisconsin, MERS may only hold a mortgage as a security for money it loaned, it loaned no money and the MERS nominated mortgage is void as against public policy.

WHEREFORE, Amy Jo Brown demands that the Complaint be dismissed with prejudice and with costs, that the lis pendens be released and for the following relief on Counts One, Two, Three and Four and set forth below:

As to COUNT ONE:

A. Money judgment for actual and statutory damages, attorneys' fees and costs in an amount to be proven at trial;

As to COUNT TWO:

B. Judgment rescinding the fraudulently induced mortgage loan given under false pretenses to the nonexistent entity, AWL;

C. Judgment for restitution damages in the amount of the payments she made on the fraudulently induced loan;

D. Money judgment for damages for the loss of enjoyment of her home since the first fraudulent foreclosure was commenced in 2009;

E. Money judgment for reputation damages for having had to file bankruptcy and for having the two fraudulent foreclosures published on the Wisconsin Circuit Court Access Program and in the public record;

F. Consequential damages consisting of attorney's fees and costs of litigation to defend against this action which is the second fraudulent foreclosure action to the extent not fully repaid by the FDCPA attorney's fees and costs award;

G. Punitive damages in an amount in excess of One Million Dollars (\$1,000,000.00);

As to COUNT THREE:

H. Declaratory judgment declaring the mortgage recorded on September 29, 2004 as Document Number 3208941 in the Waukesha County Register of Deeds purporting to encumber Defendant's homestead to be null and void as having arisen from a mortgage given to an nonexistent entity and procured by a fraudulent transaction and ordering the mortgage stricken from the public record;

I. Declaratory judgment declaring the mortgage assignment recorded on September 29, 2009 as Document Number 3696329 in the Waukesha County Register of Deeds purporting to encumber Defendant's homestead to be null and void as arising from a mortgage given to an nonexistent entity, procured by a fraudulent transaction and because it is a forgery, and ordering the mortgage and mortgage assignment stricken from the public record;

As to COUNT FOUR:

J. Declaratory judgment declaring the mortgage recorded on August 31, 2006 as Document Number 3416723 in the Waukesha County Register of Deeds purporting to encumber Defendant's homestead to be null and void as held by a unregistered foreign corporation which loaned no money and because the MERS mortgage is void as granted to an unregistered foreign corporation as part of a scheme to defraud homeowners, circumvent public recording fees and is further void against public policy; and

As to the Complaint COUNTS ONE, TWO, THREE AND FOUR

K. Ordering such further relief as may be just and appropriate in these premises.

**JURY TRIAL BY A JURY OF TWELVE PERSONS IS DEMANDED
JURY FEE TENDERED ON MAY 1, 2012**

Dated at Madison, Wisconsin this 20th day of May, 2013.

/s/ Wendy Alison Nora

Wendy Alison Nora
ACCESS LEGAL SERVICES
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WI BAR # 1017043

AUTHENTICATION AND VERIFICATION

STATE OF WISCONSIN)
)
) ss
)
COUNTY OF WAUKESHA)

Amy Jo Brown, being first duly sworn on oath, states that she performed the original research into the claims of the Plaintiffs' standing in these proceedings and that she has read, conducted independent investigation and assisted in the preparation of the foregoing answer, affirmative defenses, counterclaims and third party complaints in this matter. She states, upon her own knowledge, that facts stated in the foregoing pleadings are true and correct, to the best of her current personal knowledge, where stated, and according to her information and belief, where so stated. Where answers and affirmative defenses have been interposed are based upon law and not facts, except to the extent that she states that she is familiar banking law and securities law as practiced in the United States of America, and that the factual statements and statements of lawful practice in securities and banking law are true upon her current knowledge or, where stated upon, information and belief, are believed by her to be true and that this pleading is made in good faith in an effort and by no means to delay these proceedings or to harass or intimidate any party hereto. Where counterclaims, cross claims and third-party complaints are pleaded, the claims are made in accordance with existing law or a good faith effort to modify existing law.

In responding to this pleading, she does not waive her right to continue to object to the standing of the putative Plaintiffs to proceed or their entitlement to the relief sought herein, but despite lack of standing of the Plaintiffs to invoke the jurisdiction of the Court for the relief they request, she asserts that the voluntary submission to this Court's jurisdiction by the Plaintiffs constitutes the right to plead counterclaims against them by timely amendment of this pleading now performed in accordance with Wis. Stats. sec. 805.09(1). She reserves her right to seek

leave to amend her Counterclaims, Crossclaims and Third-Party Complaint by leave of Court, as well as her right to have her pleadings conform to the proofs at trial as allowed by law.

/s/ Amy Jo Brown

Amy Jo Brown

Subscribed and sworn to before me this
20th day of May, 2013.

/s/ Wendy Alison Nora

Wendy Alison Nora
Notary Public. My commission is permanent.